

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on February 15, 2001 at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Jack Wells, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Edward Butcher (R)
Sen. William Crismore (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Debbie Shea (D)
Sen. Bill Tash (R)
Sen. Jon Tester (D)

Members Excused: Sen. Eve Franklin (D)

Members Absent: None.

Staff Present: Roberta Opel, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 163, SB 409, SB 431;
2/12/2001
Executive Action: SB 163, SB 409, SB 431, SB 304

HEARING ON SB 409

Sponsor: SEN. SAM KITZENSBERG, SD 48, Glasgow

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. SAM KITZENBERG, SD 48, Glasgow, presented SB 409 to create a new state park in Region 6. The seven regions within Montana each have a state park, he said, except Region 6. This question of equality is one of concern, he told committee members.

EXHIBIT(fis38a01)

The three best ideas for the state park are included in this bill, **SEN. KITZENBERG** continued, including a Lewis & Clark State Park near Wolf Point, Homestead State Park in Phillips County and an IMAX Theater near Regina and West Glacier.

Proponents' Testimony:

None

Opponents' Testimony:

None

Informational Testimony:

Doug Monger, Administrator, FWP, Parks Division, offered testimony regarding SB 409. The bill would statutorily create three new state parks in northeastern Montana, **Mr. Monger** said.

EXHIBIT(fis38a02)

Questions from Committee Members and Responses:

SEN. PETE EKEGREN asked **SEN. KITZENBERG** to describe the controversy surrounding RIT (Resource Indemnity Trust) funding.

SEN. KITZENBERG said he agreed.

SEN. JON TESTER explained the RIT was used for well funding as discussed in the Senate Agriculture Committee.

SEN. TESTER asked where the IMAX Theater would be located.

SEN. KITZENBERG answered the theater would be located near Fort Peck; 20 miles from Glasgow.

SEN. TESTER asked how large the theater would be.

SEN. KITZENBERG said the theater would not be the largest IMAX theater. He referred the committee to the previous handout.

(EXHIBIT 1)

SEN. TESTER asked if a market study had been conducted.

SEN. KITZENBERG responded that a low traffic estimate for the area would be 350,000 but this number is increasing.

SEN. TESTER inquired if there were FWP funds available that could be dedicated for the IMAX Theater.

Mr. Monger replied there were no available funds.

SEN. AL BISHOP asked **SEN. KITZENBERG** if the effective date of the theater could coincide with the construction of RT 2.
(laughter).

SEN. KITZENBERG said the problem would be that he wanted to live long enough to see the construction of the theater. (laughter).

SEN. SPRAGUE asked **Mr. Monger** if there were philanthropic organizations who could assist with further park and theater development.

Mr. Monger replied there were such organizations noting that the Fort Benton Museum had been the recipient of such philanthropy.

SEN. ED BUTCHER mentioned there was a museum in Lewistown that had received philanthropic donations.

SEN. BISHOP asked who owned the land near Fort Peck and the Kiwanis Park.

Mr. Monger said the Army Corps of Engineers owned this land. FWP could be granted a long term lease of the property or the land could be sold or donated to FWP for park designation, he said.

SEN. BISHOP asked who owned the land in Phillips County.

Mr. Monger said it was his understanding that land had been willed to the Montana State University Experiment Station and is held in a life-estate.

SEN. BISHOP asked if it was restricted to a deed or grant.

Mr. Monger answered that he was unsure. He explained FWP had not explored the situation.

Closing by Sponsor:

SEN. KITZENBERG said there had been numerous unsuccessful attempts to create a new state a park in Region 6. He emphasized the Region needed this park designation and asked for committee support.

HEARING ON SB 431

Sponsor: SEN. EMILY STONINGTON, SD 15, Bozeman

Proponents: Chris Smith, Chief of Staff, Fish, Wildlife & Parks
(FWP)
Janet Ellis, Montana Audubon
Toby Day, Montana Wildlife Federation

Opponents:

None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman stated SB 431 is clarification of existing law regarding the commercial collection of nongame wildlife. She distributed a list of animal classifications and discussed the commercial taking of wildlife.
EXHIBIT (fis38a03)

{Tape : 1; Side : A}

Proponents' Testimony:

Chris Smith, Chief of Staff, FWP, stated that commercialization of wildlife through profit-driven harvest is an issue of increasing concern both in Montana and nationally.

Janet Ellis, Montana Audubon, said SB 431 is important clarification of current law allowing FWP clear authority to manage commercial harvest of nongame. The bill does not regulate the take of these animals, she emphasized.

Toby Day, Montana Wildlife Federation, said non-game animals are important for habitat and are linked to other animals.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. BUTCHER noticed the bill did not have a fiscal note. It was his understanding, he said, that FWP would be taking care of all critters from porcupines to field mice.

Mr. Smith said FWP currently has management responsibility for nongame species as well as game and fur-bearing animals. The only classification FWP does not manage are predators including coyotes, lynx and wolves when they are de-listed.

SEN. BUTCHER further asked if the department would now be regulating coyote hunts.

Mr. Smith replied, no, since coyotes are classified as predators.

SEN. SPRAGUE asked to have EXHIBIT 3 passed to the committee once again to help members distinguish between game, nongame, predators, and furbearers.

SEN. BUTCHER asked if the department would be taking control of raccoons.

Mr. Smith replied FWP is currently responsible for management of these species. In many instances, he explained, the department does not conduct surveys unless there is a problem indicated.

SEN. BUTCHER said the bill seemed redundant, then, since these animals were already under the jurisdiction of FWP.

Mr. Smith said the department's authority to regulate nongame is limited to designated nongame species in need of management.

SEN. BUTCHER suggested an overly-zealous person could have a tremendous impact on a property owner.

Mr. Smith said he did not interpret existing law or the proposed legislation in the same manner. FWP currently has authority to designate a nongame species in need of management without legislative approval based on data received about that species. If this determination is made, the department can also adopt regulation on the take of that species. **Mr. Smith** noted this discussion was an issue that was separate from the bill.

SEN. ELLINGSON asked, for example, if he could set traps for Western Meadowlarks.

Mr. Smith noted that all birds are protected by the Migratory Bird Treaty Act.

SEN. ELLINGSTON asked about the taking of racoons.

Mr. Smith replied that racoons are a nongame animal.

SEN. SPRAGUE asked if the Western Big-eared Bat at Lewis & Clark Caverns was protected.

Mr. Smith answered yes, it was protected as were all bats.

SEN. SPRAGUE inquired if the Western Big-eared Bat was a rare species to the area.

Mr. Smith said he was unsure of the status of the Big-eared Bat.

SEN. TESTER asked if these animals were harvested alive.

Mr. Smith replied, yes.

SEN. CRISMORE asked if the distributed list was accurate.

Mr. Smith replied that the list was correct according to current statute. Upon federal de-listing of the gray wolf, it would be added to this category. Fox are considered nongame animals.

SEN. CRISMORE asked if the fox, then, was an animal that was not protected.

Mr. Smith clarified the Norther Swift Fox is a furbearer but the Red Fox is a nongame animal. The department will propose to add the Red Fox to the list of predators, he said.

SEN. BISHOP read from Montana Code Annotated (MCA) to **SEN. BUTCHER** to explain legislative policy related to wildlife management.

SEN. BUTCHER said management of nongame species is currently covered by existing law, according to MCA.

SEN. BISHOP explained that the bill covers the taking and selling of animals. FWP wants to protect the commercial taking of nongame wildlife.

Cosing by Sponsor:

SEN. STONINGTON told the committee the driving force behind the bill was to govern individuals who want to take snakes and sell them in pet shops. The bill is not intended to "reach out the big arm of government" and impose restrictions on landowners, she said. The department has the authority to determine if a species is in need of management. SB 431 would give the department more authority to govern people wanting to harvest nongame wildlife for sale.

HEARING ON SB 163

Sponsor: SEN. LORENTS GROSFIELD, SD 13, Big Timber

Proponents: Chase Hibbard, MT. Wool Grower's Association and
Governors' Wolf Management Advisory Council
Chris Smith, Chief of Staff, Fish, Wildlife & Parks
Steve Pilcher, MT. Stockgrower's Association
Carol Lambert, Women Involved in Farm Economics
Janet Ellis, Montana Audubon
Nancy Schlepp, Montana Farm Bureau
Toby Day, Montana Wildlife Federation
Bernard A. Jacobs, Agency Counsel, MT. Department of
Livestock

Opponents: None

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, stated SB 163 was requested by the Department of Fish, Wildlife & Parks to determine proposed conservation for grizzly bears in the Yellowstone Ecosystem. A Memorandum of Understanding (MOA) among the governors of Montana, Idaho and Wyoming was developed to review conservation and de-listing of grizzly bears, wolves and lynx, he said. **EXHIBIT(fis38a04)**

{Tape : 1; Side : B}

SEN. GROSFIELD noted a key component to the bill was to increase the state's ability to maintain (or regain) management instead of the federal government.

Proponents' Testimony:

Chase Hibbard, Chairman, Governors' Wolf Management Advisory Council and on behalf of the MT. Wool Grower's Association, told the committee he represented the groups working specifically to de-list wolves. The agencies have been working in this region for the past fifteen years to recover wolves to a level where they could be de-listed and under state management.

EXHIBIT(fis38a05).

Chris Smith, Chief of Staff, FWP, told the committee SB 163 would pave the way for de-listing the wolf, grizzly bear and lynx. Recommendations from two public advisory processes would follow in the process, he said. De-listing would allow states' to retain management of each species. **EXHIBIT(fis38a06)**

{Tape : 2; Side : A}

Steve Pilcher, Vice-President, MT. Stockgrower's Association, testified in support of the bill with the proposed amendment. Allowing a rancher management decisions to protect his property from depredation is the right step.

Carol Lambert, W.I.F.E. (Women Involved in Farm Economics), said they recognize the need to correct federal management of wolves and predators.

Janet Ellis, Montana Audubon, said the organization recognizes the bill as an important step toward recovery of these species.

Nancy Schlepp, representing the MT. Farm Bureau, told the committee that on their ranch they had lost four calves withing two days with sightings of both a wolf and a grizzly.

Toby Day, Montana Wildlife Federation, comprised mostly of hunters, is divided in their support of the bill. He told the committee the bill is a step in the right direction, however.

Opponents' Testimony:

None

Informational Testimony:

Bernard A. Jacobs, Agency Counsel, MT. Department of Livestock, testified the Board was not opposed to the legislation.

EXHIBIT(fis38a07) He said he supported the proposed amendment which would strike "termination." The department would never intentionally exterminate any species who prey on livestock, he told the committee.

Jeff Hagener, Director, FWP, submitted testimony in support of the bill. **EXHIBIT(fis38a08)**

Questions from Committee Members and Responses:

SEN. CRISMORE asked **Mr. Hibbard** to advise the committee where these wolf packs in Montana were located.

Mr. Hibbard answered the most recent numbers in northwest Montana are 63 wolves constituting five breeding pairs as compared to a December count of 71 wolves and seven breeding pairs.

SEN. CRISMORE asked if wolf distribution was broken down into packs.

Mr. Hibbard asked **SEN. CRISMORE** which pack was of interest to him.

SEN. CRISMORE asked if there was a Pleasant Valley or Wolf Creek pack.

Mr. Hibbard said there were no statistics on these packs.

SEN. CRISMORE said many of his constituents believed packs were being intentionally omitted from these counts.

Mr. Hebert said he would not try to defend USFWS statistics. He commented that wolf study is likely not an exacting science.

Mr. Smith, a former research biologist, said monitoring wolves is difficult for any biologist.

SEN. BUTCHER said one of his constituents had flown over Yellowstone Park and considered the Park "over-run with wolves."

Mr. Smith remarked that the best wolf populations are probably in Yellowstone where more accurate statistics are kept. USFWS focus their study on populations that have been re-introduced.

SEN. BUTCHER said perhaps well-managed pack statistics made the un-managed packs suspect.

Mr. Smith reiterated that counting wolves is a very difficult art.

Montana management decisions are not as stringent as USFWS, he noted.

SEN. SPRAGUE asked if the department could calculate the various wolf populations.

Mr. Smith said the wolf population growth rate in Yellowstone has been calculated and closely monitored. Wolf de-listing will likely occur ahead of grizzly bear de-listing, he said.

SEN. BUTCHER asked how the department would manage prolific wolf populations and their predation on specific populations.

Mr. Smith said the Wolf Management Plan had developed specific recommendations to address similar concerns. The Council is encouraged to develop a management strategy on deer and elk populations either through department management or hunting.

SEN. TESTER asked **Mr. Hebert** to explain what would happen if de-listing caused a decline in wolf populations.

Mr. Hebert said these statistics would be necessary to initiate the de-listing process. State wolf management plans differ from federal plans, he said, noting that Montana has not set a ceiling on maximum wolf packs.

{Tape : 2; Side : B}

SEN. TESTER wondered if federal monitoring would continue for five years after the de-listing process.

Mr. Smith said the Endangered Species Act requires a de-listed species to be monitored for five years.

SEN. BUTCHER questioned how federal and state wolf pack numbers would be rectified for monitoring.

Mr. Smith said the state would work cooperatively with USFWS to add state and federal numbers to reach an agreement. If an agreement could not be reached, the state would have the prerogative to petition for de-listing.

Closing by Sponsor:

SEN. GROSFIELD wanted to remind the committee that although the lynx was not discussed during the hearing, it is included in the federal de-listing plan. The goal of the state management plan is to ensure de-listing for these species, he said in closing.

Motion: SEN. WELLS MOVED TO AMEND SB 163, (SB016301.amv).
EXHIBIT(fis38a09)

Discussion:

Mary Vandenbosch explained the amendment would eliminate "exterminate" where it appears in the bill.

Vote: The motion carried unanimously.

Motion/Vote: SEN. WELLS MOVED SB 163 DO PASS AS AMENDED. The motion carried unanimously, 11-0.

EXECUTIVE ACTION ON SB 431

Motion/Vote: SEN. BISHOP MOVED SB 431 DO PASS. The motion carried 10-1, with SEN. BUTCHER voting "no."

EXECUTIVE ACTION ON SB 304

Discussion:

Don Childress, Administrator, FWP, Wildlife Division, said the amendment changes the percentage rate for program and administrative cost.

SEN. TESTER said the amendment does not require the department to spend money on the birds prior to habitat enhancement.

Mr. Childress replied the amendment provides a hard dollar amount for releasing birds.

Motion: SEN. WELLS MOVED TO AMEND SB 304, (SB030403.amv).
EXHIBIT(fis38a10)

Vote: The motion carried unanimously.

Motion/Vote: SEN. FRANKLIN MOVED SB 304 DO PASS AS AMENDED. The motion carried 8-3, with SENATORS BISHOP, BUTCHER and TESTER voting "no."

Discussion:

SEN. BUTCHER said he would oppose the bill due to opposition in his area for planting birds.

SEN. SPRAGUE reminded the committee that additional amendments to SB 304, (SB030403.amv) had been previously moved.

EXECUTIVE ACTION ON SB 409

Motion/Vote: SEN. BUTCHER MOVED TO TABLE SB 409. The motion carried, 10-1, with SEN. TESTER voting "no."

ADJOURNMENT

Adjournment: 4:50 P.M.

SEN. MIKE SPRAGUE, Chairman

ROBERTA OPEL, Secretary

MS/RO

EXHIBIT (fis38aad)